
Request for Qualifications

Exhibit design, fabrication
and installation for the West
Tennessee Solar Farm

April 20, 2011


THE UNIVERSITY *of* TENNESSEE
RESEARCH FOUNDATION
AN INDEPENDENT 501(c)3 ORGANIZATION

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I. Introduction

The University of Tennessee Research Foundation is accepting qualifications and portfolios for an exhibit design/fabrication firm or team for the West Tennessee Solar Farm Welcome Center, an interpretive exhibit to be located in Haywood County, Tennessee. Interested design firms/teams should meet all of the below criteria, and must provide the requested documentation to Susan Stewart by May 2, 2011. Once firms have been qualified, they will be asked to submit a bid according to the attached Scope of Work for the Welcome Center.

Qualifications

- Possess 10+ years' experience in the exhibit design and fabrication industry;
- Possess experience working with government entities and/or universities;
- Possess the experience and ability to design and fabricate flexible, durable, mobile exhibits that may be relocated and used in various locations prior to installation in a permanent location;
- Possess creativity and have the ability to offer creative solutions;
- Have knowledge of museum industry standards for exhibit design and fabrication;
- Be willing to work collaboratively with the Welcome Center's University of Tennessee Solar Farm Outreach Committee;
- Be willing to work within the constraints of a specific budget, including allowing budget for storage and transportation of the exhibits, as well as the retrofitting and installation, once the Welcome Center is built; be capable of preparing budgets for anticipated costs of maintaining exhibits post-completion of proposed work;
- Provide samples or a summary of experience using sustainable materials. Given the nature of this sustainable-energy project, the use of sustainable materials is preferred, when such materials are available and viable within the budget stipulations;
- Submit a portfolio showcasing relevant work/projects, as well as other projects that showcase firm's diversity (show phases of design and fabrication);

Once firms are qualified through the process of meeting the above criteria, a selected number of firms will be asked to bid on the West Tennessee Solar Farm Welcome Center Exhibits.

II. Background

The West Tennessee Solar Farm consists of a 5 Megawatt (MW) array of fixed orientation silicon-based photovoltaic panels (~ 30 acres) and an interstate Welcome Center to be built off Interstate 40, near mile-marker 45 in Haywood County, Tennessee. The Welcome Center will combine a motorist rest area, overseen by the Tennessee Department of Transportation (TDOT), with a Solar Education Center that will be overseen

by the University of Tennessee. The Welcome Center will be surrounded by 20 acres of parking and green space for picnic areas, walking paths, and/or outdoor displays, with the fenced solar array extending beyond the parking/green space area. The Welcome Center is expected to be approximately 9,000 square feet, with approximately 4,000 square feet dedicated to the Solar Information Center and its displays. The remainder of the interior space will contain travel facilities and information, and will be overseen by TDOT. The Welcome Center currently is planned for construction in calendar year 2012-2013. The Solar Information Center displays will need to be completed prior to construction of the Welcome Center.

Funding for the Welcome Center includes allocation from the Tennessee Department of Economic and Community Development of \$62.5 million in American Recovery and Reinvestment Act funds to the Volunteer Solar State Initiative. The initiative includes the West Tennessee Solar Farm and the Tennessee Solar Institute. The West Tennessee Solar Farm project is supported by the Department of Energy under Award Number DE-EE0000160.

III. **Anticipated Scope of Work**

The selected design firm/team will be asked to develop the interpretive plan (including conceptual design, design development, final design, construction documents, fabrication and installation) for museum-quality displays and exhibits to enhance the Welcome Center experience. The designs will consist of museum panels, interactive displays, and possibly audio/visual components. The development of the interpretive plan will be performed with input from the UT Solar Information Center Advisory Committee and proceed along a milestone-driven approval process. The firm or team also will be asked to provide recommendations on cost-saving methods in alignment with the best practices for museum exhibits, as well as provide creative ideas for how the displays could, in part or whole, be used as “mobile” exhibits, prior to permanent placement in the Welcome Center. Several of the displays could be located in areas that are open to the public with little or no direct supervision, and durability and maintenance requirements should also factor into display design, construction, and deployment.

The firm/team will be asked to develop plans, with the knowledge that this project may require building exhibits that will be deployed in temporary or semi-permanent locations prior to their permanent installation in the Welcome Center. The Welcome Center will be completed on a separate timetable and the exhibits will be completed before the building is constructed.

The interpretive themes and topics for the displays will include, but are not limited to, the following : (1) educating the public about the benefits of solar energy and sustainable resources, (2) providing basic education about how solar and other power is generated, distributed and consumed, (3) positioning the state of Tennessee as a leader in solar innovation, including highlighting University of Tennessee, Oak Ridge National Laboratory and other state institutions’ research and accomplishments in the field of energy, (4) highlighting the state’s solar industry and its economic impact, (5) explaining the surrounding solar farm, and (6) other potential topics, as determined by the design firm/team, and/or the UT Solar Farm Committee

IV. **Proposed Timeline**

RFQ Issued: April 19, 2011

Qualification Statements Due: May 2, 2011, 4 PM EDT

Qualified Contractors Short List Determined/ Notification	May 13, 2011
Pre-proposal Information Meeting Deadline	May 20, 2011
Request for Proposal Issued (Estimated)	May 23, 2011
Proposals Due	June 27, 2011
Selection of Contractor	July 6, 2011
Award of Contract (Approximate)	August 1, 2011
Exhibits Finished	April 30, 2012

V. RFQ Response Procedures

Responses to this RFQ shall be provided by May 2, 2011, 4 p.m., as an email attachment in Adobe Acrobat PDF format, addressed to susans@tennessee.edu. The e-mail subject line should read, "Response to West Tennessee Solar Farm RFQ." Additionally, written copies of the response should be provided, clearly marked on the envelope as follows: "West Tennessee Solar Farm RFQ Response." Send five (5) copies to:

University of Tennessee Research Foundation
600 Henley Street, Suite 311
Knoxville, Tennessee 37996-4134
ATTN: Susan Stewart

susans@tennessee.edu

Responses to the RFQ should answer the following questions specifically. Additional company information may be submitted, but will not receive priority consideration in review of qualifications:

1. Provide organization information for each company participating in the design and installation of the solar displays. Each company's role in the project should be clearly described and delineated. For each company, provide at a minimum the following information:

- a. Organization information: Overview of company size, years in business, services, and resumes of key individuals who would specifically be responsible for servicing this project;
- b. Contact information: List all project team members for the firm or firms comprising your design/install team;
- c. Company's capability and level of responsibility: Provide evidence of an ability to accomplish each of the required responsibilities listed in Section III of this RFQ;

- d. Demonstrate company financial viability to responsibly enter into potential agreement of the size and duration required for this project.
2. Describe prior or current projects of a similar nature (mobile and/or modular displays) that were designed, procured, and/or installed by your company. Include this information for each company that is part of your design/build team. Include the following:
 - a. Project name;
 - b. Brief physical description of the project, and explanation of how/where it was used as a mobile exhibit;
 - c. Year project design/build was completed;
 - d. Name of your company's project manager who was responsible for this project;
 - e. Contact information (name, phone, and e-mail) for client;
 - f. Brief description of your company's role in the project, and names/ roles of other companies involved in the design, installation, transportation, display or installation of exhibit(s);
 - g. Sample portfolio/pictures of the projects.
 3. Describe your company's experience and prior projects (if applicable) in working with requirements of the American Recovery and Reinvestment Act. For the most recent such project (if any), provide at a minimum:
 - a. Project name;
 - b. Location;
 - c. Funding agency;
 - d. Name of project manager for your company responsible for this project; and
 - e. Brief description of the project.
 4. Describe your company's business history and business presence in the State of Tennessee.
 5. Describe your company's history of working with a university or other higher-education institution.
 6. Describe your company's experience working with sustainable materials.
 7. Provide contact information for questions regarding RFQ submissions, including name and title, mailing address, phone number and e-mail address.

By providing information as a response to this RFQ, respondents are consenting to its use and consideration by the UT Research Foundation and understand that the response may be deemed to be a public record that may be disclosed publicly agencies of the executive branch of government of the State of Tennessee, or the Tennessee General Assembly.

Amendments to the RFQ: In the event that any substantive issues require clarification or amendment during the process, an Amendment to this RFQ will be issued and posted on the UT Research Foundation website at: www.utrf.tennessee.edu. No mailing of updates, questions, or responses to questions regarding this RFQ will be performed by the UT Research Foundation for this RFQ.

Questions and Inquiries: Questions regarding the RFQ may be submitted to Susan Stewart at the UT Research Foundation via e-mail: susans@tennessee.edu. No questions will be accepted by telephone, fax, mail, hand delivery or any other method. Questions must be made on behalf of a prospective responding company, and must include the requesting company's name, e-mail or mailing address, telephone number, and the name of the prospective responding company. Questions submitted, along with the responses made, will be posted on the UT Research Foundation website, <http://utr.f.tennessee.edu/>. Questions that are not related to this RFQ, or are otherwise deemed inappropriate, will not be posted.

VI. Miscellaneous Provisions

The UT Research Foundation reserves the right to reject any and all qualifications and/or proposals and does not bind itself to accept any qualifications or proposals or any part thereof. No warranties or representations of any kind are made by the UT Research Foundation, including a representation or warranty that displays will be installed. The UT Research Foundation does not intend to award a contract on the basis of this RFQ or to pay for the expressions of interest solicited. Submission of a response will in no way affect eligibility to respond to future solicitations for the potential development of future projects by the University of Tennessee or the UT Research Foundation. The UT Research Foundation reserves the right to cancel this RFQ at any time with or without notice to respondents, and without liability.

Equal Opportunity: No person or company shall be discriminated against because of race, color, national origin, or sex in the award of this potential contract. Further, there shall be no discrimination on the basis of race, color, national origin or sex in the performance of contracts awarded by UT Research Foundation.

VII. Flow-Down Provisions

Any contracts and contracted work under the West Tennessee Solar Farm project, including the work described herein, will be subject to any and all of the flowdown provisions listed in Appendices A and B..

APPENDIX A
DEPARTMENT OF ENERGY
SUBGRANT FLOW DOWN PROVISIONS

Provisions included herein apply to Contractor's performance of the project, and these requirements, among others, will be included in any contract issued by UTRF. Contractor shall provide provisions similar to this Appendix A in its contracts with subcontractors.

STATEMENT OF FEDERAL STEWARDSHIP – MANDATORY FLOW DOWN REQUIRED

DOE will exercise normal Federal stewardship in overseeing the Project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the Project; assuring compliance with terms and conditions; and reviewing technical performance after Project completion to ensure that the award objectives have been accomplished.

SITE VISITS – MANDATORY FLOW DOWN REQUIRED

DOE's authorized representatives have the right to make site visits at reasonable times to review Project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subcontractors to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

REPORTING REQUIREMENTS -- MANDATORY FLOW DOWN REQUIRED

- a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.
- b. Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).
- c. Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected 29 Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

PUBLICATIONS – MANDATORY FLOW DOWN REQUIRED

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this Project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number DE-EE0000095

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION – MANDATORY FLOW DOWN REQUIRED

- a. The intellectual property provisions applicable to this contract may be found at http://www.gc.doe.gov/financial_assistance_awards.htm.
- b. Questions regarding intellectual property matters should be referred, through UTRF, to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award to ECD. The IP Service Providers List is found at [www.gc.doe.gov/documents/Intellectual_Property_\(IP\)_Service_Providers_for_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf).

LOBBYING RESTRICTIONS – MANDATORY FLOW DOWN REQUIRED

By accepting funds under this contract, you agree that none of the funds obligated on the contract shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS – MANDATORY FLOW DOWN REQUIRED

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this contract should be American-made.

HISTORIC PRESERVATION -- MANDATORY FLOW DOWN REQUIRED

Prior to the expenditure of Federal funds to alter any structure or site, the Contractor is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the Contractor must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link:

<http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.

Section 110(k) of the NHPA applies to DOE funded activities. Contractor shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Contractor should be aware that the DOE Contracting Officer will consider the Contractor in compliance with Section 106 of the NHPA only after the Contractor has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Contractor that it does not object to its Section 106 finding or determination. Contractor shall provide a copy of this concurrence to the Contracting Officer.

Prescription: This clause must be included in all grants, cooperative agreements and TIAs (new or amended) when funds appropriated under ARRA are obligated to the agreement.

SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 -- MANDATORY FLOW DOWN REQUIRED

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit. The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below. Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds – the Contractor, subcontractor, grantee, or recipient, as the case may be, if the Contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any Contractor or subcontractor

receiving the funds and any Contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government. Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized –

(1) to examine any records of the Contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, subaward, grant, or subgrant; and

(2) to interview any officer or employee of the Contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this contract will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct, a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of

2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. Request for Reimbursement (this version is included in WAP/SEP awards with states)

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H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, Contractor, sub-grantee, subContractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in supporting of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS -- SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 -- MANDATORY FLOW DOWN REQUIRED

(a) Definitions. As used in this award term and condition--

(1) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been--

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference.

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111--5), by requiring that all iron, steel, and manufactured goods used in the Project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that--

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the Project is unreasonable when the cumulative cost of such material will increase the cost of the overall Project by more than 25 percent;

- (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act .

(1) (i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including--

- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
- (B) Unit of measure;
- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;
- (F) Location of the Project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description Unit of measure, Quantity, Cost (dollars)*

Item 1:

Foreign steel, iron, or manufactured good _____

Domestic steel, iron, or manufactured good _____

Item 2:

Foreign steel, iron, or manufactured good _____

Domestic steel, iron, or manufactured good _____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT -- MANDATORY FLOW DOWN REQUIRED

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by Contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts.

Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

DAVIS BACON ACT REQUIREMENTS

A. Definitions. For purposes of this term, the Contract Work Hours and Safety Standards Act term, and the Recipient Functions term, the following definitions are applicable:

(1) *Award* means the Award by the Department of Energy (DOE) to a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Subrecipients, Contractors and subContractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act.

(2) —*Construction, alteration or repair* means all types of work done by laborers and mechanics employed by the Subrecipient, construction Contractor or construction subContractor on a particular building or work at the site thereof, including without limitation—

(a) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(b) Painting and decorating; or

(c) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work.

(3) *Contract* means a written procurement contract executed by a Subrecipient for the acquisition of property and services for construction, alteration, and repair under a Subaward.

For purposes of these terms, a Contract shall include subcontracts and lower- tier subcontracts under the Contract.

(4) *Contracting Officer* means the DOE official authorized to execute awards on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) *Contractor* means an entity that enters into a Contract. For purposes of these terms, Contractor shall include subContractors and lower-tier subContractors.

(6) *Recipient* means any entity other than an individual that receives Recovery Act funds in the form of a grant directly from the Federal Government. The term includes the State that receives an Award from DOE and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(7) —*Site of the work*—

(a) Means—

(i) The physical place or places where the construction called for in the Award, Subaward, or Contract will remain when work on it is completed; and

- (ii) Any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the Project;
- (b) Except as provided in paragraph (c) of this definition, the site of the work includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—
- (1) They are dedicated exclusively, or nearly so, to performance of the Project; and
- (2) They are adjacent or virtually adjacent to the site of the work as defined in paragraphs (7)(a)(i) or (7)(a)(ii) of this definition; and
- (c) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular contract or Federal Award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the Project before opening of bids and not on the Project site as defined in paragraphs (7)(a)(i) or (7)(a)(ii) of this definition, are not included in the —site of the work. Such permanent, previously established facilities are not a part of the —site of the work even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of an Award, Subaward, or Contract.
- (8) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient’s procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of —Award above.
- (9) *Subrecipient* means a non-Federal entity that expends Federal awards received from a pass-through entity [Recipient] to carry out a Federal program, but does not include an individual that is a beneficiary of such a program. The term includes a Community Action Agency (CAA), local agency, or other entity to which a Subaward under the Award is made by a Recipient that includes a requirement to comply with the labor standards clauses and wage rate requirements of the DBA work performed by all laborers and mechanics employed by Contractors and subContractors on projects funded by or assisted in whole or in part by and through the Federal Government pursuant of the Recovery Act.

B. Davis-Bacon Act

- (1) (a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached to the Subaward or Contract and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Recipient, a Subrecipient, or Contractor and such laborers and mechanics.
- (i) *Applicable to Recipient Only:* Prior to the issuance of the Subaward or Contract, the Recipient shall notify the Contracting Officer of the site of the work in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.
- (ii) If the Subaward or Contract is or has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

(b) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the DBA on behalf of laborers or mechanics are considered wages paid to such laborers and mechanics, subject to the provisions of paragraph B(4) below; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(c) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the paragraph entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(d) The wage determination (including any additional classifications and wage rates conformed under paragraph B(2) of this term) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Subrecipient and Contractor at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2)(a) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Subaward or Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Subrecipient (and Contractor, when applicable) and the laborers and mechanics to be employed in the classification (if known), or their representatives agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of this agreement. If the Contracting Officer agrees with the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the: Wage and Hour Division Employment Standards Administration U.S. Department of Labor Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(c) In the event the Subrecipient (and Contractor, when applicable), and the laborers or mechanics to be employed in the classification, or their representatives, do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Subrecipient shall notify the Recipient. The Recipient shall notify the Contracting Officer of the disagreement. The Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs B(2)(b) or B(2)(c) of this Term shall be paid to all workers performing work in the classification under the Award, Subaward, or Contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the Award, Subaward, or Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Subrecipient and Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Subrecipient or Contractor does not make payments to a trustee or other third person, the Subrecipient or Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Subrecipient or Contractor that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Subrecipient or Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

C. Rates of Wages

(1) The minimum wages to be paid laborers and mechanics under the Subaward or Contract involved in performance of work at the Project site, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are included as an attachment to the Award, Subaward, or Contract.

(2) If the Subaward or Contract has been issued without a wage determination, the Recipient shall notify the Contracting Officer immediately of the site of the work under the Subaward or Contract in order for the appropriate wage determination to be obtained by the Contracting Officer from the Secretary of Labor.

D. Payrolls and Basic Records

(1) Payrolls and basic records relating thereto shall be maintained by the Recipient, Subrecipient and Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (4) of the provision entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Subrecipient or Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Subrecipient or Contractor employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2)(a) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Subrecipient. The Subrecipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Recipient. The Recipient shall submit weekly for each week in which any Subaward or Contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information

required to be maintained under paragraph D(1) of this Term, except that the full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site.

(b) The Recipient is responsible for ensuring that all Subrecipients and Contractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this Term. The Subrecipient is responsible for ensuring all Contractors, including lower tier subContractors submit copies of payrolls and basic records as required by paragraph D, Payrolls and Basic Records, of this term. Subrecipients and Contractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request for transmission to the Contracting Officer, the Recipient, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. The Recipient shall also obtain and provide the full social security number and current address of each covered worker upon request by the Contracting Officer or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Recipient to require a Subrecipient or Contractor to provide addresses and social security numbers to the Recipient for its own records, without weekly submission to the Contracting Officer.

(c) Each payroll submitted shall be accompanied by a —Statement of Compliance, signed by the Recipient, Subrecipient or Contractor or his or her agent who pays or supervises the payment of the persons employed under the Subaward or Contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph D(2)(a) of this Term, the appropriate information is being maintained under paragraph D(1) of this Term, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Subaward or Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Subaward or Contract.

(d) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the —Statement of Compliance required by paragraph D(2)(c) of this Term.

(e) The falsification of any of the certifications in Paragraph D, Payrolls and Basic Records, of this Term may subject the Recipient, Subrecipient or Contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Recipient, Subrecipient, or Contractor shall make the records required under paragraph D(1) of this Term available for inspection, copying, or transcription by the Contracting Officer, authorized representatives of the Contracting Officer, or the Department of Labor. The Subrecipient or Contractor shall permit the Contracting Officer, authorized representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Recipient, Subrecipient, or Contractor fails to submit the required records or to make them available, the Contracting Officer may, after written notice to the Recipient, Subrecipient, or Contractor take such action as may be

necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

E. Withholding of Funds

(1) The DOE Contracting Officer shall, upon his or her or its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Recipient or any other contract or Federal Award with the same Recipient, on this or any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Recipient so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subrecipient or a Contractor the full amount of wages required by the Award or Subaward or a Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Award or Subaward or a Contract, the Contracting Officer may, after written notice to the Recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) The Recipient shall, upon its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause to be withheld from any Subrecipient or Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Subrecipient or Contractor the full amount of wages required by the Subaward or Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the Subaward or Contract, the Recipient may, after written notice to the Subrecipient or Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased or the Government may cause the suspension of any further payment under any other contract or Federal award with the same Subrecipient or Contractor, on any other federally assisted Award subject to Davis-Bacon prevailing wage requirements, which is held by the same Subrecipient or Contractor.

F. Apprentices and Trainees

(1) Apprentices.

(a) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(b) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Subrecipient or Contractor as to the entire work force under the registered program.

(c) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph F(1) of this Term, shall be paid not less than the applicable wage determination for

the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(d) Where a Subrecipient or Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Subrecipient's or Contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(e) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(f) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Subrecipient or Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) Trainees.

(a) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(b) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship/training program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(c) In the event OATELS withdraws approval of a training program, the Subrecipient or Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this Term shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

G. Compliance with Copeland Act Requirements

The Recipient, Subrecipient or Contractor shall comply with the requirements of 29 CFR Part 3 which are hereby incorporated by reference in the Award, Subaward or Contract.

H. Subawards and Contracts

(1) The Recipient, the Subrecipient and Contractor shall insert in the Subaward or any Contracts this Term entitled —Davis Bacon Act Requirements and such other terms as the Contracting Officer may require. The Recipient shall be responsible for ensuring compliance by any Subrecipient or Contractor with all of the requirements contained in this Term. The Subrecipient shall be responsible for the compliance by Contractor with all of the requirements contained in this Term.

(2) Within 14 days after issuance of a Subaward, the Recipient shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Subaward and Contract for construction within the United States, including the Subrecipient's and Contractor's signed and dated acknowledgment that this Term) has been included in the Subaward and any Contracts. The SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413_e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413_e.pdf). Within 14 days after issuance of a Contract or lower- tier subcontract, the Subrecipient shall deliver to the Recipient a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each Contract and lower-tier subcontract for construction within the United States, including the Contractor and lower- tier subcontractor's signed and dated acknowledgment that this Term has been included in any Contract and lower-tier subcontracts. SF 1413 is available from the Contracting Officer or at [http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/\\$file/sf1413_e.pdf](http://contacts.gsa.gov/webforms.nsf/0/70B4872D16EE95A785256A26004F7EA8/$file/sf1413_e.pdf). The Recipient shall immediately provide to the DOE Contracting Officer the completed Standard Forms (SF) 1413.

I. Contract Termination—Debarment

A breach of these provisions may be grounds for termination of the Award, Subaward, or Contract and for debarment as a Contractor or subContractor as provided in 29 CFR 5.12.

J. Compliance with Davis-Bacon and Related Act Regulations

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in the Award, Subaward or Contract.

K. Disputes Concerning Labor Standards

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and shall not be subject to any other dispute provision that may be contained in the Award, Subaward, and Contract. Disputes within the meaning of this Term include disputes between the Recipient, Subrecipient (including any Contractor) and the Department of Energy, the U.S. Department of Labor, or the employees or their representatives.

L. Certification of Eligibility.

(1) By entering into this Award, Subaward, or Contract (as applicable), the Recipient, Subrecipient, or Contractor, respectively certifies that neither it (nor he or she) nor any person or firm who has an interest in the Recipient, Subrecipient, or Contractor's firm, is a person, entity, or firm ineligible to be awarded Government contracts or Government awards by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(2) No part of this Award, Subaward or Contract shall be subcontracted to any person or firm ineligible for award of a Government contract or Government award by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

M. Approval of Wage Rates

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under an Award, Subaward or Contract must be submitted for approval in writing by the head of the federal contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the Award, Subaward or Contract. Any amount paid by the Subrecipient or Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Subrecipient or Contractor and shall not be reimbursed by the Recipient or Subrecipient. If the Government refuses to authorize the use of the overtime, the Subrecipient or Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

Contract Work Hours and Safety Standards Act

This Term entitled —Contract Work Hours and Safety Standards Act (CWHSSA) shall apply to any Subaward or Contract in an amount in excess of \$100,000. As used in this CWHSSA Term, the terms laborers and mechanics include watchmen and guards.

A. Overtime requirements. No Subrecipient or Contractor contracting for any part of the Subaward work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the term set forth in paragraph B herein, the Subrecipient or Contractor responsible therefor shall be liable for the unpaid wages. In addition, such Subrecipient or Contractor shall be liable to the United States (in the case of work done under a Subaward or Contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provision set forth in CWHSSA paragraph A, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the term set forth in paragraph (A) of this section.

C. Withholding for unpaid wages and liquidated damages.

(1) The DOE Contracting Officer shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Recipient on this or any other Federal Award or Federal contract with the same Recipient on any other federally-assisted Award or contract subject to the CWHSSA, which is held by the same Recipient such sums as may be determined to be necessary to satisfy any liabilities of such Recipient for unpaid wages and liquidated damages as provided in the term set forth in CWHSSA, paragraph B of this Term.

(2) The Recipient shall, upon its own action or upon written request of the DOE Contracting Officer or an authorized representative of the Department of Labor, withhold or cause from any moneys payable on account of work performed by the Subrecipient or Contractor on this or any other federally assisted subaward or contract subject to the CWHSSA, which is held by the same Subrecipient or Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Subrecipient or Contractor for unpaid wages and liquidated damages as provided in term set forth in CWHSSA, paragraph B of this Term.

D. Subcontracts. The Subrecipient shall insert in a Contract and a Contractor shall insert in any lower tier subcontracts, the terms set forth in these CWHSSA paragraphs (A) through (D) and also a provision requiring the Contractors to include this CWHSSA Term in any lower tier subcontracts. The Recipient shall be responsible for compliance by any Subrecipient or Contractor, with the CWHSSA paragraphs A through D. The Subrecipient shall be responsible for compliance by any Contractor (including lower- tier subContractors).

E. The Subrecipient or Contractor shall maintain payrolls and basic payrolls in accordance with Davis-Bacon Act Requirements term, for all laborers and mechanics, including guards and watchmen working on the Subaward or Contracts. These records are subject to the requirements set forth in the Davis Bacon Requirements term. 51

APPENDIX B
State of Tennessee

CONTRACT FLOW-DOWN REQUIREMENTS -- MANDATORY FLOW DOWN REQUIRED

Provisions included herein apply to Contractor's performance of the project, and these requirements, among others, will be included in any contract issued by UTRF. Contractor shall provide provisions similar to this Appendix B in its contracts with subcontractors.

Monitoring. Contractor's activities and records pursuant to this Contract shall be subject to monitoring and evaluation by UTRF, UT, ECD, the Comptroller of the Treasury or their duly appointed representatives.

Assignment. In the discretion of the ECD, UT, and UTRF, UTRF may assign all of its rights and obligations in any contract that results from this RFP to UT or ECD to complete the work. Contractor will be required to evidence consent to this option in favor of ECD in any contract awarded as a result of this RFP.

Conflicts of Interest. Contractors shall conduct their activities under this Contract and any subcontracts in a manner to avoid conflicts of interest pursuant to all relevant laws, statutes, and other applicable state and federal requirements.

Subject to Appropriation and Availability of State and Federal Funds. Any Contract that might result from this RFP is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated, are appropriated at less than the full amount specified in DOE Award No. DE-EE0000160, or are otherwise unavailable, UTRF reserves the right to terminate the Contract upon written notice to Contractor. Said termination shall not be deemed a breach of Contract by UTRF. Upon receipt of the written notice, Contractor shall cease all work associated with the Contract. Should such an event occur, Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date.

Voluntary Buyout Program. Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (—VBH) severance payment with regard to contracts with state agencies that participated in the VBP.

1. Contractor may not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest. Contractor may not contract with either a former state employee who received a VBP severance payment or any entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.

2. Contracts between Contractor and Subcontractors shall require Subcontractors to comply with all applicable VBP restrictions. Costs incurred by Contractor outside the scope of the Project or not permitted by the Contract or DOE Award No. DE-EE0000160 or applicable state or federal law shall be the responsibility of Contractor.

Public Accountability. To the extent this Contract involves the provision of services to citizens, Contractor agrees to establish and require Subcontractors to establish a system through which recipients of

services may present grievances about the operation of the service program, and to display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least 12 inches (12") in height and 18 inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

Environmental Tobacco Smoke. Pursuant to the provisions of the federal —Pro-Children Act of 1994 and the Tennessee —Children's Act for Clean Indoor Air of 1995 Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. Contractor shall post —no smoking signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines.

Debarment and Suspension. Contractor will be required to certify, to the best of its knowledge and belief, that Contractor and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
2. Have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in Section 2 above; and
4. Have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.
5. Contractor shall provide immediate written notice to UTRF if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of Contractor are excluded or disqualified.

Performance. Contractor shall perform its work, and require Subcontractors to perform their work, in a professional manner, exercising the degree of skill and care required and customarily accepted for good professional practices and procedures for the type of work being performed.

Prevailing Wage, Licenses, and Certificates. All contracts for installation, erection, or demolition or the installation of goods or materials require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.* All Contractors performing such work must have a Tennessee Contractor's license, and must demonstrate the proper licensing classification for the work performed. No such on-Site work may take place until the insurance required by this Contract has been secured and appropriate and current certificates of insurance in accordance with this Contract issued. Contractor shall maintain copies of all certificates of insurance for Subcontractors and assure that such insurance remains current during the course of this Contract.

Compliance with Federal, State, and Local Requirements. At all times, Contractor shall comply with all applicable federal, state and local governmental entity laws, statutes, regulations, permitting and environmental requirements, codes and ordinances.

Confidentiality of Records. For records that may be held in confidence under the Public Records Act, strict standards of confidentiality of records shall be maintained in accordance with the law. All such confidential material and information, regardless of form, medium or method of communication, provided to Contractor shall be regarded as confidential information in accordance with the provisions of State law and shall not be disclosed, and all necessary steps shall be taken by Contractor to safeguard the confidentiality of such material or information in conformance with State law.

1. The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of UTRF's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

2. Contractors' obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractors without written obligations to UTRF to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of UTRF's information; or, disclosed by UTRF to others without restrictions against disclosure.

Federal Endorsement. Parties to this Contract and all subcontractors may not claim a federal endorsement of this Project, or any inventions, reports or other similar items resulting from this Project.

Ownership of Work Products. To the extent not inconsistent with the provisions of ARRA and other federal laws, UT shall own and hold any right, title, and interest, including ownership of copyright, in all work products, including computer source code, that are created, designed, developed, derived, documented, installed, or delivered under this Contract. The Parties agree that UT may assign all right, title and interest in intellectual property it may hold from time to time to UTRF pursuant to then existing UT policy and operating arrangements with UTRF. Unless otherwise provided in UT policy or operating arrangements, or otherwise agreed with UTRF, UT shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said work product.

1. Unless otherwise agreed, to the extent that Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information (—Contractor Materials), the subcontractor shall retain all right, title and interest in and to such Contractor Materials, and UTRF, UT and ECD shall acquire no right, title or interest in or to such Contractor Materials.

2. The Contractor shall furnish to UTRF such information and data as UTRF may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any work product and Contractor Materials reasonably associated with any work product, in accordance with this Contract and applicable State law.

3. Nothing in this Contract shall prohibit Contractor's use for its own purposes of general knowledge, skills, experience, ideas, concepts, no-how, and techniques attained in use during the course of providing work under this Contract.

4. Unless otherwise agreed in the Contract, nothing in this Contract shall prohibit Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

Intellectual Property. Notwithstanding any provision in this Contract to the contrary, intellectual property for any invention (hereinafter referred to as —Subject Invention), including Contractor Material, developed through the work of this Project or Generated Information, whether patented or unpatented (—Patent Rights), will be assigned to UTRF to commercialize, subject to DOE obtaining a no-cost, nonexclusive, nontransferable, irrevocable, perpetual, royalty-free, worldwide license to use or have practiced such rights for or on behalf of the U.S. government for governmental purposes. Previously documented inventions (whether patented or unpatented under the patent laws of the United States of America or any foreign country) are exempt from this provision.

Flow Down Requirements. Each Party to this Contract shall inform each of its employees, independent Contractors, consultants, or agents who are involved in the performance of this Contract of the restrictions contained herein, and shall direct compliance with such restrictions.

Dispute Resolution. Nonbinding mediation will be used to resolve any disputes arising from this Contract pursuant to the mediation rules used by the American Arbitration Association or such other mediation process that both parties agree in writing to use. If mediation does not resolve the dispute or grievance, (i) any and all claims against UT or their employees, including UT employees who are assigned to work at UTRF, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407; and (ii) any and all claims against UTRF will be brought in the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under the Contract.

Stop Work Orders. ECD, UT, or UTRF may, at any time, by written notice, require Contractor to stop all or any part of the work for the Array. Work orders may be issued for reasons such as unsafe acts or emergencies involving immediate or imminent danger to life, health, safety, environment and/or imminent catastrophe.

1. Upon receipt of any stop work order, Contractor and all Subcontractors shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
2. As soon as the condition which precipitated the stop work order has been eliminated and it is determined by that it is safe to continue the work, Contractor shall resume stopped work upon receipt of written instructions indicating that it is safe to resume the Work and canceling the stop work order.
3. Nothing in this Section shall be construed to limit or prevent UT or UTRF from issuing stop work orders for the Array as necessary for the proper execution of this Contract.

Recordkeeping. Contractors shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting principles, and sufficient to reflect properly all costs claimed to have been incurred in performing this Contract for a period of five (5) years following the completion or termination of this Contract.

Right of Access. In order to make audit, examination, excerpts, and copies, DOE, the Comptroller General of the United States, ECD, UT, UTRF and any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of Contractor and its subcontractors, and, subject

to the terms of any applicable confidentiality, non-disclosure or non-use agreement with third-parties, to the books, documents, or other records of Contractor and its Subcontractors under this Contract.

Insurance – Waiver rights of Recourse. All insurance and self-insurance schemes of Contractor and its subcontractors retained to perform work for this Project shall provide that insurers and self-insured waive any rights of recourse, including in particular subrogation rights against ECD, UT, or UTRF, and recognize ECD, UT, and UTRF as additional insureds. Contractor’s and subcontractor’s insurance or self-insurance schemes shall be primary to the extent of the liabilities assumed by UT and UTRF regarding this Project.

Affirmative Action and Non-discrimination Requirements. The Parties agree that the non-discrimination and affirmative action clauses contained in Federal Executive Order 11246, as amended, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations contained in Title 41, part 60 of the Code of Federal Regulations, as amended; the non-discrimination and affirmative action clause contained in Section 503 of the Rehabilitation Act of 1973, as amended, relative to the employment and advancement in employment of qualified individual(s) with a disability without discrimination, and the implementing rules and regulations in Title 41, part 60-741 of the Code of Federal Regulations; the non-discrimination and affirmative action clause of the Vietnam Era Veterans Readjustment Assistance Act of 1974 relative to the employment and advancement in employment of qualified special disabled veterans, recently separated veterans, Vietnam era veterans, and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, without discrimination, and the implementing rules and regulations in Title 41, part 60-250 of the Code of Federal Regulations; and the non-discrimination provisions required by all applicable law of the State of Tennessee apply to this Contract and work performed by subcontracts between Contractors and subcontractors for this Project shall so provide in all such contracts with subcontractors. Contractors and subcontractors shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

Federal Lobbying Certification. Contractors and subcontractors will certify, upon execution of all Contracts associated with this Project, that they are in compliance with the requirements of Section 1352, Title 31, United States Code, which limits the use of appropriated funds to influence certain Federal contracting and financial transactions. All subcontracts for this Project shall so require.

State of Tennessee Lobbying Certification. Contractor and all subcontractors shall certify, to the best of their knowledge and belief, that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, grant, loan, or cooperative agreement, Contractor shall notify UTRF and complete and submit Standard Form-LLL, —Disclosure Form to Report Lobbying, in accordance with its instructions.

3. Contractor and subcontractors shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all Contractors and subcontractors shall certify and disclose accordingly.

4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, *U.S. Code*.

Tax Credits. If UT, UTRF, or any UTRF Contractor or Subcontractor are now or in subsequent years entitled to receive any federal tax credit associated with the receipt or expenditure of funds in developing the Array (—Tax Credit), then UT, UTRF or UT Subcontractors shall transfer or assign any such Tax Credit or the value of any such Tax Credit to ECD to the full extent permitted by federal law. To the extent federal law prohibits UT Subcontractors from transferring a Tax Credit, then the Tax Credit shall be the property of UTRF Contractors or Subcontractors but must be used to reduce the cost of goods and services they provide in developing the Array or to increase the amount of goods and services they convey to ECD, UT or UTRF in developing the Array. The terms of this subsection to be included in all Contracts and subcontracts executed in connection with developing the Array.

Renewable Energy Credits. All Renewable Energy Credits or carbon credits and offsets of any type, as they may exist during the term of this Contract and thereafter, that directly or indirectly flow from the Array are the property of ECD and shall not be transferred to any other entity without the prior written permission of ECD. However, it is understood by both Parties that the credits or offsets are subject to being transferred to TVA under the terms of the power purchase agreement to be negotiated by UT.